

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ROGER KEITH, CO-EXECUTOR  
TO THE ESTATE OF  
ERNEST V. KEITH, DECEASED

Plaintiff,

v.

1:05-cv-00326-KAJ

GEORGE A. SIORIS, ESQUIRE,  
HENRY A. HEIMAN, ESQUIRE,  
and HEIMAN ABER GOLDLUST & BAKER,

Defendants.

**RESPONSE OF HENRY A. HEIMAN, ESQUIRE AND HEIMAN ABER  
GOLDLUST & BAKER TO DEFENDANT, GREGORY SIORIS'  
NOTICE OF REMOVAL**

1. Under the Federal Rules and supporting case law, a party cannot stipulate to subject matter jurisdiction. Furthermore, if a party possesses facts that could aid in the Court's determination of whether subject matter jurisdiction exists, that party has an obligation to bring those facts to the Court's attention, so that the Court can make an informed decision. Such facts must be brought to the Court's attention regardless of whether or not the party would prefer that the case be litigated in the federal system as opposed to the state system.
2. Based on defense counsel's continuing obligation to bring relevant facts to the Court's attention, defendants have attached a copy of the Register's Order, dated May 28, 1996. The Register's Order indicates that Roger M. Keith, co-executor of Ernest Keith's Estate, and plaintiff in the above captioned case, resides at 117 Burning Tree Road, Dover, DE 19904. A copy of the Register's Order is attached.
3. Pursuant to 28 U.S.C. §1332(c)(2), the legal representative of the estate of the decedent shall be deemed to be a citizen only of the same state as the decedent. As evident by the Register's Order, decedent's estate was located in Delaware, therefore, Roger Keith, as co-executor, must be deemed a resident of Delaware, regardless of where he presently resides.
3. Under federal case law, 28 U.S.C. §1441(a) (2004), is to be strictly construed, requiring remand if any doubt exists over whether removal is proper. Shamrock Oil & Gaz Corp. v. Sheets, 313 U.S. 100, 104 (1941). Furthermore, the party seeking removal bears the burden of establishing federal jurisdiction. Zoren v. Genesis Energy. L.P., 195 F. Supp.2d 598, 602 (D.Del.2002).

4. Based on the foregoing, it appears that defendant Gregory Sioris' Notice of Removal can not be granted since both plaintiff and at least one defendant are residents of Delaware.

**ELZUFON AUSTIN REARDON  
TARLOV & MONDELL, P.A.**

**/s/ Matthew P. Donelson**

John A. Elzufon, Esquire #177  
Matthew P. Donelson, Esquire #4243  
300 Delaware Avenue, Suite 1700  
P.O. Box 1630  
Wilmington, DE 19899-1630  
(302) 428-3181  
Attorney for Defendants  
Henry A. Heiman, Esquire and  
Heiman Aber Goldlust & Baker

DATED: 06/16/05

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**REGISTER'S ORDER****REGISTER'S OFFICE**

Kent County, Delaware, May 28 19 96

Upon application of David P. Buckson, Donna L. Baker and Roger M. Keith  
 Co-Executors of Ernest V. Keith, late of Kent  
 County, deceased, it is ordered and directed by the Register that the said  
 David P. Buckson, Donna L. Baker, And Roger M. Keith  
 who on the 28th day of May A.D. 19 96 was appointed Co-Executors  
 as aforesaid, give notice of the granting of such Letters and the date thereof, by advertisements to be  
 posted in the County Court House, in and for Kent County and published in Dover Post  
 a newspaper published in Kent County, at least once a week for a period of three successive weeks,  
 requiring all persons having claims against the said Ernest V. Keith to exhibit the  
 same to such Co-Executors or abide by the law in this behalf.

GIVEN under my hand and seal of office, at Dover  
 in said Kent County, the day and year above written.

*Ross W. Trader*  
 REGISTER

**NOTICE**

In pursuance of an order of ROSS W. TRADER, Register of Wills, in and for Kent County, Delaware,  
 dated May 28 A.D. 19 96 notice is hereby given of the granting  
 Letters Testamentary on the estate of Ernest V. Keith  
 on the Twenty-Eighth day of May A.D. 19 96 All persons having claims  
 against the said Ernest V. Keith who died on May 13, 1996  
 are required to exhibit the same to such Co-Executors within eight months  
 of the date of death or abide by the law in that behalf, which provides that such claims against the said estate  
 not so exhibited shall be forever barred.

ROSS W. TRADER  
 Register of Wills

*Donna L. Baker*  
*David P. Buckson*  
*Roger M. Keith*

Attorney For Estate:

Personal Representative(s)

Donna L. Baker Roger M. Keith  
 R.D. 2 Box 271 117 Burning Tree Rd.  
 Greenwood, Dela. 19956 Dover, Dela. 19904  
 David P. Buckson  
 110 N. Main St.  
 Camden, Dela. 19934

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GREGORY A. SIORIS, ESQUIRE,  
HENRY A. HEIMAN, ESQUIRE,  
and HEIMAN ABER GOLDLUST & BAKER,

Defendants.

**CERTIFICATE OF ELECTRONIC SERVICE**

I, Matthew P. Donelson, do hereby certify that on this 16th day of June, 2005, I have caused the following documents to be served electronically on the parties listed below:

1. Response to defendant Gregory A. Sioris, Esq.'s Notice of Removal;
2. Copy of the Register's Order;
3. This Certificate of Electronic Service.

Kevin W. Gibson, Esq. Gibson & Perkins LP 1326 King Street Wilmington, DE 19801	Gregory A. Sioris, Esq. 350 Fifth Avenue #7606 New York, NY 10118-7606
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DATE: June 16, 2005

/s/MATTHEW P. DONELSON  
MATTHEW P. DONELSON #4243